

Office of the Attorney General State of Texas

DAN MORALES ATTORNEY GENERAL

November 30, 1998

Mr. Rusty Renfroe, CLA City Attorney's Office City of Longview P.O. Box 1952 Longview, Texas 75606-1952

OR98-2878

Dear Mr. Renfroe:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 120095.

The City of Longview (the "city") received a request for information regarding the arrest of Mr. Nathan Oliver. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. You have submitted what you contend is a representative sample of the responsive documents. We have considered your arguments and reviewed the submitted information.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. The governmental body claiming this exception has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. Heard v. Houston Post Co., 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). You must meet both prongs of this test for information to be excepted under section 552.103(a).

The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 at 4 (1986) and authorities cited therein. To demonstrate that litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. Id. Whether litigation is reasonably anticipated must be determined on a case by-case basis.

We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Open Records Decision No. 452 at 4 (1986). Your representation that you have received a claim that complies with the notice requirements of the Texas Tort Claims Act, Civ. Prac. & Rem. Code ch. 101, is sufficient to establish reasonable anticipation of litigation. See Open Records Decision No. 638 (1996) (fact that governmental body received claim letter that it represents to this office to be in compliance with notice requirements of Texas Tort Claims Act, Civ. Prac. & Rem. Code ch. 101, or applicable municipal ordinance shows that litigation is reasonably anticipated). We have reviewed the submitted information and conclude that it relates to this pending litigation. We conclude that the requested information is generally excepted from disclosure by Government Code section 552.103(a).

In reaching this conclusion, however, we assume that the opposing party to the anticipated litigation has not previously had access to the records at issue. Absent special circumstances, once information has been obtained by opposing parties in the litigation, section 552.103 no longer applies. Open Records Decision Nos. 349 (1982), 320 (1982). We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

The litigation exception does not except all of the subject information from disclosure. Even where litigation is reasonably anticipated, basic factual information about a crime must be released. Open Records Decision No. 362 (1983). Information normally found on the front page of an offense report is generally considered public, and must be released. Houston Chronicle Publishing Company v. City of Houston, 531 S.W.2d 177 (Tex Civ. App.--Houston [14th Dist. 1975, writ ref'd n.r.e.); see Open Records Decision No. 127 (1976). Thus, you must release the type of information that is considered to be front page offense report information, including a detailed description of the offense and arrest, even if this information is not actually located on the front page of the offense report.

In conclusion, the requested information may be withheld pursuant to Government code section 552.103, with the exception of "front page" information which must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

Michael J. Burns

W/16/182

Assistant Attorney General

Open Records Division

MJB/ch

Ref: ID# 120095

Enclosures: Submitted documents

cc: Mr. John R. Salazar

Attorney at Law

851 South Thornton, Suite 104-A

Dallas, Texas 75203 (w/o enclosures)